

unfair for the Commission to classify a Part 90 operator as "new" on the basis of just one Part 90 license.). "New" Part 90 licensees, on the other hand, will be subject to the new CMRS rules upon their adoption.

A. Application Forms.

The FCC has drafted a new "Form 600" to cover all CMRS services; it is attached to its Further Notice. That form is two pages long, with six different schedules to be used depending on the CMRS service at issue.

It is obvious that the FCC has attempted to come up with a unified, simple form for all Part 90 and Part 22 services, and those efforts should be praised. Nevertheless, it will take some time to become familiar with this new form, so it is difficult to say whether it is an improvement over previous ones. Surely, the one-page FCC Form 574 had simplicity in its favor; one would have hoped that the Commission could have devised a similar simple form for all CMRS applications.

The new form seems to unnecessarily require explicit responses concerning various eligibility matters. Since all radio applicants are expected to be familiar with the Act and the FCC's Rules, and to certify in an application that they qualify for a license under those Rules, it was not essential for the new CMRS application to reiterate all of those requirements.

Also, the fact that the FCC will continue to require microfiche copies from certain CMRS applicants, a technology that predates the invention of television, to license the builders of

the "Information Superhighway," should be cause for serious agency and industry concern. What with enormous spectrum auction fees, annual user fees, and higher application fees, it will soon become difficult to convince the mobile radio industry that the FCC still cannot afford to obtain the most rudimentary computer equipment needed to efficiently handle the licensing needs of CMRS applicants.

B. Application Fees/Regulatory Fees.

It is understandable that the FCC would want to ensure that comparable filing fees, and annual regulatory fees, are imposed on Part 90 and Part 22 applicants under the new CMRS Rules. One option, of course, would have been to lower the Part 22 filing fee from \$230 to the Part 90 level of \$35, and to lower the Part 22 annual regulatory fee from \$60 per 1000 subscribers to the Part 90 level of \$16 per license per year. Oddly enough, that proposal was never raised in the Further Notice, rather, the FCC proposed the alternative: to raise everyone's filing and regulatory fees to the Part 22 level. Surely, this is the least surprising proposal in the Further Notice. However, it draws the question as to why a singular cellular license, which encompasses greatly more spectrum and potentially many more users at much higher commercial revenue is effectively "priced" lower than the aggregate fees for a regional Part 22 paging system.

It would be easy to cynically shrug off this fee increase as inevitable, but it is far from inevitable that higher filing and regulatory fees for Part 90 operators would be deemed consistent

with Congress's statutory mandate, and the FCC's obligations. At present, Part 90 licensees obtain their radio licenses quicker, with less expense, and less paperwork than do Part 22 licenses. Now, the FCC is proposing to charge them more, for slower, more expensive application processing, without any explanation. That is unacceptable.

The Further Notice states that the FCC will assess whether "competition ... might be harmed ..." by proposed CMRS changes, and whether they will cause "practical considerations and difficulties ... associated with the changes." Further Notice at ¶ 23. A nearly ten-fold increase in filing expenses for Part 90 applicants certainly constitutes a "practical consideration and difficulty." Yet, this agency has not even attempted to explain why Part 22 filing fees should be so much higher than the ones that presently apply to "substantially similar" PCP services. (The public protest requirements of Section 309 cannot be blamed for those differences; informal protests can also be filed against Part 90 applications).

This fee increase should be addressed, and the agency should publicly account for the differences in speed of processing, and costs, between the "substantially similar" Part 90 and Part 22 CMRS services, before higher fees are imposed on Part 90 carriers.

C. Public Notice/Petition to Deny Procedures.

The FCC has determined that Section 309 Public Notice requirements will not apply to PCP services until such time as

the FCC resolves pending PCP exclusivity matters. Further Notice at ¶ 128. Other Part 90 services may be subject to the 30 day protest and mutually exclusive filing rules that govern common carrier applications. The FCC has proposed shortening the "MX" period from 60 to 30 days. Rather than using lotteries to select between mutually exclusive applicants, the Commission has proposed that auctions be used in the CMRS services. Id. at ¶ 119-128.

The FCC seems wedded to the conclusion that placing Part 90 applications on public notice and allowing petitions to deny "is likely to lengthen the licensing process for these applicants in comparison to existing private radio procedures." Further Notice at ¶ 118. It is not inevitable that Section 309's requirements should cause a delay in the ability of Part 90 or Part 22 licensees to commence operations. Metrocall offers the following suggestions to expedite the processing of all CMRS applications.

The FCC could readily dismiss many frivolous petitions to deny simply by enforcing the statutory requirement that a petitioner have "standing" to protest an application. Section 309(d)(1) of the Act confers standing to file a petition to deny only on a "party in interest," and "[t]he petition shall contain specific allegations of fact sufficient to show that petitioner is a party in interest[.]" 47 U.S.C. § 309(d)(1).

The allegations of fact necessary to prove standing must be supported by affidavit. Corpus Christi Cellular Telephone Co., 3 FCC Rcd. 1889, 1889 (Mob. Serv. Div., 1988); Lawrence N. Brandt,

3 FCC Rcd. 4082, 4082 (Dom. Fac. Div., 1988). Moreover, the Petitioner must demonstrate that it will suffer direct injury from grant of the Application. See, e.g., Lawrence N. Brandt, 3 FCC Rcd. at 4082. In short, a rigorous review of a protestor's standing, the moment a protest is filed, could lead to the dismissal of many frivolous or "greenmail" protests.

Moreover, nothing in the language of Section 309 of the Act prohibits the FCC from allowing "conditional" operation of a radio station prior to expiration of the protest period, subject to termination or deferral if a "valid" petition to deny is later filed, in a timely manner. An applicant could elect to construct and operate a CMRS station under the express condition that it shut down operations if a petition to deny is filed within 30 days of public notice of the application. If a valid protest is filed, the applicant could either request Special Temporary Authorization to continue operations (grantable at the FCC's discretion, under Section 309 of the Act), or elect to shut down until the protest is resolved.

D. Amendments and Modifications.

The FCC has preliminarily determined that modification applications are not appropriate for competitive bidding in mutually exclusive situations. Metrocall agrees. Likewise, major amendments should not be subject to competitive bidding. Presumably, the underlying application has already been "available" for competitive bids. Applicants should be able to make necessary changes to their applications without having to

risk an auction.

E. Permissible Changes/Minor Modifications.

The FCC has asked for suggestions as to what facilities changes could be deemed "minor" or "permissive" under the new CMRS Rules. Further Notice at ¶ 134. In addition to those listed therein, Metrocall suggests that the Commission consider allowing licensees to relocate control stations as a minor or permissive change, so long as it can be accomplished without causing harmful interference to other stations. Under the current rules, virtually any relocation of a control station is considered a major modification. That rule can cause unnecessary and costly delays, particularly when associated base stations are ready to be moved under the minor modification rules.

F. License Terms/Renewal Expectancy.

Metrocall agrees that Part 90 licenses should be conformed to be 10 years long, such as Part 22 licenses. Metrocall concurs with the proposal to adopt a "renewal expectancy" for incumbent CMRS licensees.

G. Assignment of Licenses/Transfers of Control.

The FCC proposes that only constructed and operational exclusive frequency CMRS stations may be assigned or transferred, "provided that the applicant can demonstrate that the assignment or transfer will serve the public interest" Further Notice at ¶ 144. It is not clear what "demonstration" would pass agency muster under the public interest standard, and that vagueness is reason enough for concern with this proposal.

The "constructed station" requirement itself is not unreasonable, however, the FCC should allow exceptions when there are unusual showings of need.

The FCC has stated that these requirements will not apply to shared frequency CMRS stations, since "trafficking" is not a practical concern on a shared frequency. Metrocall concurs.

IX. Conclusion

The FCC may not now fully appreciate how "surprised" many licensees will be when they learn about the new CMRS rules that will govern their businesses. That concern merits a cautious, deliberate, and clearly defined approach toward the adoption of these new CMRS rules. Unfortunately, Congress has left the FCC with little time for such a contemplative approach.

One would hope that the Further Notice itself could be interpreted as good faith compliance with the August 1994 statutory deadline, and that the FCC could take some time to read the industry's comments, consider their concerns and practical needs, and ensure that the quality of the new CMRS rules does not suffer in the haste to adopt them.

Respectfully submitted,

METROCALL, INC.

By: _____

Frederick M. Joyce
Christine McLaughlin
JOYCE & JACOBS
2300 M Street, N.W.
Suite 130
Washington, D.C. 20037
(202) 457-0100

Date: June 20, 1994

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 20th day of June, 1994, copies of the foregoing Comments of Metrocall, Inc. were mailed, postage prepaid, to the following:

Chairman Reed Hundt*
Federal Communications Comm.
Washington, D.C. 20554

Commissioner Andrew C. Barrett*
Federal Communications Comm.
Washington, D.C. 20554

Commissioner Rachelle Chong*
Federal Communications Comm.
Washington, D.C. 20554

A. Richard Metzger, Chief*
Common Carrier Bureau
Federal Communications Comm.
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Terry L. Fishel, Chief
Land Mobile Branch
Federal Communications Comm.
Route 116
Gettysburg, PA 17326

John Sherlock, V.P.
NABER
1501 Duke Street
Alexandria, VA 22314

Commissioner James H. Quello*
Federal Communications Comm.
Washington, D.C. 20554

Commissioner Susan Ness*
Federal Communications Comm.
Washington, D.C. 20554

Ralph Haller, Chief*
Private Radio Bureau
Federal Communications Comm.
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

John Cimko, Chief*
Mobile Services Division
Common Carrier Bureau
Federal Communications Comm.
1919 M Street, N.W.--Room 644
Washington, D.C. 20554

Jay Kitchen, President
NABER
1501 Duke Street
Alexandria, VA 22314

Mr. Paul Glist, Esq.
Matthew P. Zinn, Esq.
Leonard Communications
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Thomas J. Keller, Esq.
Michael S. Wroblewski, Esq.
Association of American Railroads
Verner, Liipfert, Bernhard,
McPherson and Hand, Chtd.
901 15th Street, N.W.
Washington, D.C. 20005

Stephen L. Goodman, Esq.
Orbital Communications Corp.
Halprin, Temple & Goodman
1100 New York Avenue, N.W.
Suite 650 East Tower
Washington, D.C. 20005

Richard R. Zaragoza, Esq.
David D. Oxenford, Esq.
Francisco R. Montero, Esq.
John M. Burgett, Esq.
Arizona Broadcasters Assoc.,
Fisher, Wayland, Cooper, Leader &
Zaragoza
2001 Pennsylvania Ave., N.W., #400
Washington, D.C. 20006-1851

Robert B. Kelly, Esq.
Kelly, Hunter, Mow & Povich, P.C.
Advanced Mobilcom Technologies
1133 Connecticut Ave., N.W.
Washington, D.C. 20036

Lou Gurman, Esq.
Gurman, Kurtis, Blask & Freedman,
Chtd.
Allcity Paging, Inc.
1400 16th Street, N.W., #500
Washington, D.C. 20036

Mr. Alan R. Shark, Pres.
Jill M. Lyon, Esq.
American Mobile Telecomm Assoc.
1835 K Street, N.W., Suite 203
Washington, D.C. 20006

Ms. Mary M. Mann
National Marine Mfg. Assoc.
3050 K Street, N.W.
Suite 145
Washington, D.C. 20007

Mr. W. T. Adams
President,
Radio Technical Comm. for
Maritime Services
P.O. Box 19807
Washington, D.C. 20036

Mr. James R. Balkcom, Jr.
President & CEO
Techsonic Industries
Five Hummingbird Lane
Eufaula Alabama 36027

John L. Bartlett, Esq.
Wiley, Rein & Fielding
Aeronautical Radio, Inc.
1776 K Street, N.W.
Washington, D.C. 20006

Ronnie Rand, Esq.
Wilkes, Artis, Hedrick & Lane
Association of Public-Safety
Comm. Officials-Int'l
1666 K Street, N.W.
Washington, D.C. 20006

Wayne V. Black, Esq.
Keller and Heckman
The American Petroleum Inst.
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Lon C. Levin, Esq.
AMSC Subsidiary Corporation
10802 Park Ridge Blvd.
Reston, VA 22091

Mr. Carl W. Northrop
Arch Communications Group, Inc.
Suite 700
700 13th Street, N.W.
Washington, D.C. 20005-3960

John T. Scott, III, Esq.
The Bell Atlantic Companies
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Lawrence M. Miller, Esq.
Schwartz, Woods & Miller
1350 Connecticut Ave., N.W., #300
Washington, D.C. 20036

Randall B. Lowe, Esq.
Jones, Day, Reavis & Pogue
Cencal Communications Corp.
1450 G Street, N.W.
Washington, D.C. 20005

Mr. Michael F. Altschul
Cellular Telecommunications
Industry Association
Two Lafayette Centre, Third Floor
1133 21st Street, N.W.
Washington, D.C. 20036

Mr. Werner K. Hertenberger
Dow, Lohnes & Albertson
Cox Enterprises, Inc.
1255 23rd Street, Suite 500
Washington, D.C. 20037

Ms. Kathy L. Shobert
General Communications, Inc.
888 16th Street, N.W., Suite 600
Washington, D.C. 20006

Mr. David A. Reams
Grand Broadcasting
Corporation
P.O. Box 502
Perrysburg, OH 43552

Rodney L. Joyce, Esq.
Ginsburg, Feldman & Bress

Michael S. Wroblewski, Esq.
Verner, Lipfort, Bernhard
McPherson and Hand, Chtd.
The Association of American
Railroads
901 15th St., N.W., Suite 700
Washington, D.C. 20005

Mr. William B. Barfield
Bellsouth
1155 Peachtree Street, N.W.
Atlanta, GA 30367-6000

Mr. John D. Lockton
Corporate Technology Partners
100 S. Ellsworth Avenue
San Mateo, CA 94401

Mr. W. Bruce Hanks
Century Cellunet, Inc.
100 Century Park Avenue
Monroe, LA 71203

Mr. Ashton R. Hardy
Hardy & Carey, L.L.P.
111 Veterans Boulevard
Suite 255
Metairie, LA 70005

Russell H. Fox, Esq.
Gardner, Carton & Douglas
E. F. Johnson Company
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Mr. Michael Hirsch
Goetek Industries, Inc.
1200 19th Street, N.W., #607
Washington, D.C. 20036

Ms. Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

David L. Nace, Esq.
Lukas, McGowan, Nace &

In-Flight Phone Corp.
1250 Connecticut Ave., N.W.
Washington, D.C. 20036

Mr. Mark E. Crosby
Industrial Telecommunications
Association, Inc.
1100 N. Glebe Road, Suite 500
Arlington, VA 22201-5720

Shirley S. Fujimoto, Esq.
Keller & Hechman
Lower Colorado River
Authority
1001 G Street, N.W., #500 West
Washington, D.C. 20001

Marla Spindel, Esq.
Paging Network, Inc.
Reed, Smith, Shaw & McClay
1200 18th St., N.W.
Washington, D.C. 20036

Ms. Ellen L. Levine
State of California
505 Van Ness Avenue, Rm 5028
San Francisco, CA 94102

Mr. Daryl L. Avery
Public Service Commission of
The District of Columbia
450 Fifth Street, N.W.
Washington, D.C. 20001

Mr. Michael R. Bennett
Rig Telephones, Inc.
Keller and Heckman
1001 G Street, N.W., #500 West
Washington, D.C. 20004

William J. Franklin, Esq.
William J. Franklin, Chtd.
Pennsylvania Ave., N.W., #300
Washington, D.C. 20006

Ms. Linda C. Sadler
Rockwell International Corp.
1745 Jefferson Davis Highway
Arlington, VA 22202

Gutierrez, Chtd.
Liberty Cellular, Inc.
1819 H Street, N.W., 7th Fl.
Washington, D.C. 20006

Phillip L. Spector, Esq.
Pagemart, Inc.
Paul, Weiss, Rifkind, Wharton
& Garrison
1615 L Street, N.W., #1300
Washington, D.C. 20036

Mr. Corwin D. Moore, Jr.
Personal Radio Steering Group
P.O. Box 2851
Ann Arbor, MI 48106

Robert F. Aldrich, Esq.
PTC Cellular
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

Anne P. Jones, Esq.
Pactel Corporation
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Mr. Terrence P. McGarthy
Telmarc Telecommunications,
Inc.
24 Woodbine Road
Florham Park, NJ 07932

Daniel S. Goldberg, Esq.
RAM Mobile Data USA Limited
Goldberg, Godles et al.
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

Mr. Michael J. Shortley, III
Rochester Telephone Corp. 1919
180 South Clinton Avenue
Rochester, NY 14646

Mr. David L. Jones
Rural Cellular Association
2120 L Street, N.W., #810
Washington, D.C. 20037

Ms. Paula J. Fulks
Southwestern Bell Corporation
175 E. Houston, Room 1218
San Antonio, TX 78205

Judith S. Ledger-Roty, Esq.
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Raul R. Rodriguez, Esq.
Starsys Global Positioning, Inc.
Leventhal, Senter & Lerman
2000 K Street, N.W., #600
Washington, D.C. 20006

Mr. Jay C. Keithley
Sprint Corporation
1850 M Street, N.W., #1100
Washington, D.C. 20036

Mark Golden, Esq.
Telocator, The Personal Communi-
cations Industry
1019 19th Street, N.W., #1100
Washington, D.C. 20036

George Y. Wheeler, Esq.
Telephone and Data Systems
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Stuart F. Feldstein, Esq.
Time Warner Telecommunications
Fleischam & Walsh
1400 Sixteenth St., N.W.
Washington, D.C. 20036

Stephen D. Baruch, Esq.
TRW, Inc.
Leventhal, Senter & Lerman
2000 K Street, N.W., #600
Washington, D.C. 20006

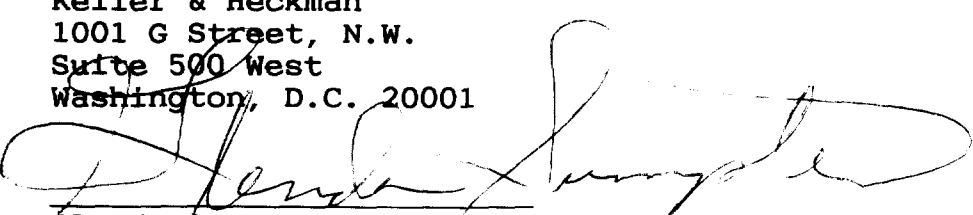
Ms. Linda Kent
United States Telephone Assoc.
900 19th Street, N.W., #800
Washington, D.C. 20006-2105

Mr. Jeffrey L. Sheldon
Utilities Telecommunications
Council
1140 Connecticut Avenue, N.W.,
Suite 1140
Washington, D.C. 20030

Michael D. Basile, Esq.
Vanguard Cellular Systems, Inc.
Dow, Lohnes & Albertson
1255 Twenty-Third St., N.W.
Suite 500
Washington, D.C. 20037

Mr. Jeffrey S. Borks
US West, Inc.
1020 19th Street, N.W., #700
Washington, D.C. 20036

Martin W. Bercovici, Esq.
Waterway Communications Sys. Inc.
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001



Glenda Sumpter

* Hand Delivery